

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

INTELLECTUAL VENTURES II LLC, ) (  
PLAINTIFF, ) ( CIVIL ACTION NO.  
6:18-CV-299-JRG  
VS. ) ( TYLER, TEXAS  
) (  
GREAT WEST CASUALTY COMPANY, ) ( MARCH 13, 2019  
DEFENDANT. ) ( 8:26 A.M.

TRIAL TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE

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United States District Court  
Eastern District of Texas  
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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 Let me ask if the parties are prepared to read into  
6 the record any items from the list of pre-admitted exhibits  
7 used during yesterday's portion of the trial?

8 MR. WILSON: Yes, Your Honor.

9 THE COURT: All right.

10 Let's proceed.

11 MR. WILSON: This is Ty Wilson on behalf of  
12 Intellectual Ventures.

13 Plaintiff did not admit any exhibits in the --  
14 yesterday's portion of the trial.

15 THE COURT: All right.

16 MR. ROGERSON: And this is Paul Rogerson on behalf  
17 of Defendant, Great West. Yesterday, on March 12th, 2019,  
18 Great West admitted the following exhibits: GWX-198,  
19 GWX-204, GWX-230, and GWX-261.

20 THE COURT: Is there any objection from Plaintiff  
21 to that rendition from Defendant?

22 MR. WILSON: No, Your Honor.

23 THE COURT: All right. Thank you, counsel.

24 Before I bring the jury in and proceed with the  
25 Court's final instructions to the jury, I just want to

1 remind those present, including those behind the bar, that  
2 closing arguments, together with the Court's final  
3 instructions, are the most serious part of a very serious  
4 process.

5           Therefore, I don't want any noise. I don't want  
6 any shuffling of papers. I don't want any people getting up  
7 and walking around. I certainly don't want to see water  
8 bottles tilted in the air. I want everybody to be as  
9 respectful and as quiet as possible.

10           So if you need to do any of those things I just  
11 mentioned, do them before I bring the jury in, because once  
12 I bring the jury in, I expect everybody to be as respectful  
13 and quiet and focused as possible so as not to detract or  
14 distract the jury from either my final instructions or  
15 counsel's closing arguments.

16           With that, are there any questions or issues that  
17 need to be raised by either party before I bring the jury  
18 in?

19           MR. GILLILAND: The only thing, Your Honor, is  
20 I'm probably going to use the flip chart with closing  
21 argument. Where would you like me to position it?

22           My -- my thought, Your Honor, is if I can put it to  
23 the right of the podium, and hopefully, Mr. Bettinger will  
24 be able to see it.

25           I don't intend to use it very many times, but that

1 would avoid me from having to walk back and forth too many  
2 times, but wherever Your Honor would like me to put it.

3 THE COURT: Well, I'd like -- I expect counsel to  
4 be within the close proximity of the podium. Sometimes we  
5 talk about it being the arm's length rule. I don't want you  
6 to be further than that.

7 One thing I will mention to you that I did not know  
8 the first time I tried a case in this courtroom, and that is  
9 that podium swivels. And if you want to turn it  
10 45 degrees so that it's facing the jury box, as opposed to  
11 the direction in which it's faced now, we can do that. We  
12 don't need to be moving it back and forth.

13 Do either of you have any preference as to whether  
14 we leave it where it is or whether we orient it toward the  
15 jury?

16 MR. BETTINGER: Either way is fine, Your Honor.

17 MR. GILLILAND: Same -- same here, Your Honor.  
18 Either way is fine. I was just trying to figure out where I  
19 could place the flip chart so --

20 THE COURT: Quite honestly, if we swivel it, it may  
21 be easier for you to have the flip chart closer to the  
22 podium.

23 MR. GILLILAND: Can we do that now, or when do you  
24 want us to try?

25 THE COURT: I think Mr. Gillam is skilled at that

1 particular move.

2 Do you want to move the podium?

3 MR. GILLILAND: Yes, Your Honor.

4 THE COURT: Let's do that.

5 MR. BETTINGER: Are you going to use the ELMO

6 because I think you can push that in --

7 MR. GILLILAND: Should I move the flip chart now,  
8 Your Honor?

9 THE COURT: Let's see -- let's put it where you  
10 think you're going to put it.

11 Ms. Lockhart, can you help them with that?

12 Just a minute, gentlemen.

13 All right. Let's go off the record for a minute.  
14 (Off the record discussion.)

15 THE COURT: Let's go back on the record.

16 All right. Let's bring in the jury, please.

17 COURT SECURITY OFFICER: All rise for the jury.  
18 (Jury in.)

19 THE COURT: Good morning, ladies and gentlemen.  
20 Please have a seat.

21 Ladies and gentlemen of the jury, you have now  
22 heard the evidence in this case, and I'll now instruct you  
23 on the law that you must apply. I want you to understand  
24 that you're each going to have your own written copy of  
25 these final instructions to the jury from me to take with

1 you and to reference in the jury room when you retire to  
2 deliberate. So unless you just particularly want to,  
3 there's no need for you to make notes while I give these to  
4 you orally since you're going to have your own hard copy  
5 when you deliberate.

6 It's your duty, ladies and gentlemen, to follow the  
7 law as I give it to you. On the other hand and as I've said  
8 previously, you are the sole judges of the facts in this  
9 case.

10 Do not consider any statement that I have made  
11 during the course of the trial or may make as a part of  
12 these instructions as an indication to you that I have any  
13 opinion about the facts in this case.

14 You're about to hear closing arguments from the  
15 attorneys. Statements and arguments from the attorneys,  
16 I remind you, are not evidence, and they are not  
17 instructions on the law. They're intended only to assist  
18 the jury in understanding the evidence and the parties'  
19 competing contentions.

20 A verdict form has been prepared for you. You'll  
21 take this verdict form with you to the jury room, and when  
22 you have reached a unanimous decision as to the verdict,  
23 you'll have your foreperson fill in the blanks in the  
24 verdict form reflecting your unanimous answers, sign it, and  
25 date it.

1           Your foreperson should then notify the Court  
2 Security Officer that you have reached a verdict.

3           Answer each question in the verdict form from the  
4 facts as you find them to be. Do not decide who you think  
5 should win the case and then answer the questions to reach  
6 that result.

7           Again, your answers and your verdict must be  
8 unanimous.

9           Now, in determining whether any fact has been  
10 proven in this case, you may, unless otherwise instructed,  
11 consider the testimony of all the witnesses, regardless of  
12 who may have called them, and you may consider the effect of  
13 all the exhibits received into evidence, regardless of who  
14 produced them.

15           As I've told you, you, the jury, are the sole  
16 judges of the credibility and believability of each and  
17 every witness, as well as the weight and effect to give to  
18 all of the evidence in this case.

19           As I've also mentioned previously, the attorneys in  
20 this case are acting as advocates for their competing  
21 clients, and they have competing claims, and they have a  
22 duty to object when they believe evidence is offered or  
23 argument is made that should not be permitted by the Court.  
24 That's happened over the course of the trial, and I've ruled  
25 on those objections.



1           In the situation where the Court has sustained an  
2       objection to a question addressed to a witness, you must  
3       disregard the question entirely, and you may draw no  
4       inferences from its wording or speculate about what the  
5       witness would have said if the Court had allowed them to  
6       answer the question.

7           However, on the other hand, if an objection  
8       addressed to a witness regarding a question was overruled by  
9       the Court, then you're to treat the question and the answer  
10      just as if no objection had been made.

11          Now, at various times over the course of the trial,  
12      it's been necessary for the Court to talk to the lawyers  
13      here at the bench or outside of your hearing when you were  
14      in the jury room. This happens during trials because there  
15      are often things that arise that do not directly impact or  
16      affect the jury.

17          You should not speculate, ladies and gentlemen,  
18      about what was said during those discussions that took place  
19      outside of your presence.

20          Now, you should understand that there are two types  
21      of evidence that you may properly consider in finding the  
22      truth as to the facts in this case.

23          One type of evidence is called direct evidence,  
24      such as the testimony of an eyewitness.

25          The other is indirect or sometimes called

1 circumstantial evidence, which is the proof of a chain of  
2 circumstances that indicates the existence or non-existence  
3 of certain other facts.

4 As a general rule, you should understand that the  
5 law makes no distinction between direct evidence or indirect  
6 evidence but simply requires that you, the jury, find the  
7 facts based on the evidence presented during the trial, both  
8 direct and indirect.

9 Now, in this case, the parties have stipulated or  
10 agreed to some facts in this case. When the lawyers for  
11 both sides stipulate as to the existence of a fact, you  
12 must, unless otherwise instructed by me, accept that  
13 stipulation as evidence and regard those facts as proven.

14 Also, over the course of the trial, certain  
15 testimony has been presented to you through a deposition. A  
16 deposition is a sworn, recorded answers to questions asked  
17 of a witness in advance of the trial.

18 If a witness can't be present in person to testify  
19 in open court, then the witness's testimony, which has been  
20 recorded under oath previously, can be played back to the  
21 jury in the form of a deposition.

22 During a deposition, the witness is present, the  
23 witness is sworn, and placed under oath -- placed on oath,  
24 and a court reporter is present, and lawyers for both of the  
25 parties are there. Questions are asked by the attorneys,

1 and answers are given by the witness. And those questions  
2 and answers are recorded.

3 That deposition testimony is entitled to the same  
4 consideration by you insofar as possible as if the witness  
5 had testified in person from open court. And, accordingly,  
6 you should judge the credibility and importance of  
7 deposition testimony to the best of your ability, just as if  
8 the witness had testified before you from the witness stand.

9 Now, while you should consider only the evidence in  
10 this case, ladies and gentlemen, you should understand that  
11 you are permitted to draw such reasonable inferences from  
12 the testimony and the exhibits as you feel are justified in  
13 the light of common experience.

14 In other words, you may make deductions, and you  
15 may reach conclusions that reason and common sense lead you  
16 to draw from the facts that have been established by the  
17 testimony and the evidence in the case.

18 However, you should not base your decision on any  
19 evidence that -- evidence that was not presented during the  
20 trial in open court, including your own personal experiences  
21 with any particular web portals.

22 Now, unless I instruct you otherwise, you may  
23 properly determine that the testimony of a single witness is  
24 sufficient to prove any fact, even if a greater number of  
25 witnesses may have testified to the contrary, after

1 considering all of the evidence you believe that single  
2 witness.

3           When knowledge of a technical subject may be  
4 helpful to the jury, a person who has special training and  
5 experience in that technical field, we call them an expert  
6 witness, is permitted to state his or her opinions on those  
7 technical matters to the jury.

8           However, ladies and gentlemen, you're not required  
9 to accept the opinions of any expert witness or any other  
10 witness for that matter.

11           It's up to you to listen to their testimony and  
12 decide whether you want to give it weight, and if -- if so,  
13 what degree of weight you want to give their testimony.

14           Again, you are the sole judges of the credibility  
15 and believability of all the witnesses and the evidence in  
16 this case.

17           Also, over the course of the trial, certain  
18 exhibits have been shown to you which are called  
19 demonstratives. These are illustrations that sometimes are  
20 used to help a party describe or picture or model something  
21 that's involved in the trial.

22           If your recollection should differ from these  
23 demonstratives, sometimes called demonstrative exhibits, you  
24 should rely on your memory, your recollection.  
25 Demonstrative exhibits are not evidence. They are sometimes

1 called jury aids.

2 And while the demonstrative itself is not evidence,  
3 the witness's testimony during which time the demonstrative  
4 is used is evidence.

5 Again, you will have to rely on your memory of the  
6 evidence in the case. But demonstratives that have been  
7 used by the -- during the trial are not evidence, and  
8 I cannot send them to you -- to the jury room if you should  
9 ask for them.

10 Now, in any legal action, facts must be proven by a  
11 required amount of evidence known as the burden of proof.

12 The burden of proof in this case is on the  
13 Plaintiff for some issues, and it's on the Defendant for  
14 other issues. And there are two burdens of proof that you  
15 will apply in this case.

16 Those are the preponderance of the evidence and  
17 clear and convincing evidence.

18 The Plaintiff, Intellectual Ventures, who you've  
19 heard referred to as IV or Intellectual Ventures, has the  
20 burden of proving patent infringement by a preponderance of  
21 the evidence.

22 Intellectual Ventures, the Plaintiff, also has the  
23 burden of proving damages for any patent infringement by a  
24 preponderance of the evidence.

25 A preponderance of the evidence means the evidence

1 that persuades you that a claim is more probably true than  
2 not true. This is sometimes talked about as being the  
3 greater weight and degree of credible testimony.

4 Now, the Defendant in this case, Great West  
5 Casualty Company, who you've heard referred to consistently  
6 as simply Great West, has the burden of proving patent  
7 invalidity by clear and convincing evidence.

8 Clear and convincing evidence means evidence that  
9 produces in your mind an abiding conviction that the truth  
10 of the party's factual contentions are highly probable.

11 Now, although proof to an absolute certainty is not  
12 required, the clear and convincing evidence standard  
13 requires a greater degree of persuasion than is necessary  
14 for the preponderance of the evidence standard.

15 If the proof establishes in your mind, ladies and  
16 gentlemen, an abiding conviction in the truth of the matter,  
17 then the clear and convincing evidence standard has been  
18 met.

19 Now, these standards are different from what you've  
20 heard about in criminal proceedings where a fact must be  
21 proven beyond a reasonable doubt.

22 On a scale of standards of proof, as you move from  
23 the preponderance of the evidence on one end to clear -- to  
24 beyond a reasonable doubt on the other end of the spectrum,  
25 you can consider clear and convincing evidence as being

1 somewhere in between.

2 Now, in determining whether any fact has been  
3 proven by a preponderance of the evidence or by clear and  
4 convincing evidence, you may -- you may, unless otherwise  
5 instructed by me, consider the stipulations of the parties,  
6 the testimony of all the witnesses, regardless of who called  
7 them, and all the exhibits received into evidence during the  
8 trial, regardless of who produced them or introduced them  
9 during the trial.

10 Now, as I did at the start of the case, I'll give  
11 you a summary of each side's contentions, and I'll then  
12 provide you with detailed instructions on what each side  
13 must prove to win on each of its contentions.

14 As I've previously told you, this case concerns one  
15 single United States patent, that is, U.S. Patent  
16 No. 7,516,177, which you've heard referred to throughout  
17 this trial as the '177 patent, sometimes called the  
18 patent-in-suit or the asserted patent.

19 Now, this patent has within it Claim 14 of this  
20 '177 patent, and the Plaintiff claims that Claim 14 of the  
21 asserted patent has been infringed by the Defendant. And  
22 the Plaintiff is seeking money damages because of this  
23 alleged infringement.

24 Now, the Defendant denies that it has infringed  
25 Claim 14 of the '177 patent, and the Defendant contends

1 additionally that Claim 14 is invalid.

2           Your job is to decide whether the Plaintiff has  
3 proven that the Defendant has infringed Claim 14 of the  
4 patent-in-suit and whether Defendant has proven that  
5 Claim 14 is invalid.

6           Infringement and invalidity, ladies and gentlemen,  
7 are separate questions and should be considered and answered  
8 separately.

9           If you decide that Claim 14 of the '177 patent has  
10 been infringed and is not invalid, then you'll need to  
11 decide any money damages that are to be awarded to Plaintiff  
12 to compensate it for that infringement.

13           Now, at the beginning of the trial, I gave you some  
14 general information about patents and the patent system and  
15 a brief overview of the patent laws relevant to this case.  
16 I'll -- I'll now give you more detailed instructions about  
17 the patent laws that relate to the case before us.

18           Before you can decide many of the issues in this  
19 case, you need to understand the role of the patent claims.

20           The patent claims are those numbered sentences at  
21 the end of the patent. And each of you have a complete copy  
22 of the '177 patent in your juror notebooks.

23           The claims, ladies and gentlemen, are important  
24 because it's the words of the claims that define what a  
25 patent covers.



1           The figures and the text in the rest of the patent  
2 provide a description and examples of the invention, and  
3 they provide a context for the claims, but it is the claims  
4 that define the breadth of the patent's coverage.

5           Each claim is effectively treated as if it were a  
6 sep -- a separate patent, and each claim may cover more or  
7 less than any other claim.

8           Accordingly, what a patent covers depends, in turn,  
9 what each of its claims covers.

10          Now, claims may describe methods or products such  
11 as machines or processes for making or using a product. In  
12 this case, Claim 14 is what's called an apparatus claim.

13          Patent claims may exist in two forms, referred to  
14 as independent claims and dependent claims. In this case,  
15 Claim 14 is a dependent claim.

16          An independent claim does not refer to any other  
17 claim in the patent. An independent claim sets forth all  
18 the requirements that must be met in order to be covered by  
19 that claim. Therefore, it's not necessary to look at any  
20 other claim to determine what an independent claim covers.

21          On the other hand, a dependent claim does not  
22 itself recite all the requirements of the claim but refers  
23 to at least one or more other claims for some of its  
24 requirements. In this way, the claim depends from another  
25 claim.

1           And a dependent claim incorporates all the  
2 requirements of the claim or claims to which it refers, or  
3 as we sometimes say, from which it depends. A dependent  
4 claim then adds its own additional requirements to those  
5 claims to which it refers.

6           Now, to determine what a dependent claim covers,  
7 it's necessary to look at both the dependent claim and any  
8 other claims to which it refers.

9           Each patent claim sets forth in words a set of  
10 requirements in a single sentence. The requirements of a  
11 claim are usually divided into parts, sometimes called  
12 elements or limitations.

13           If a device, system, apparatus, or instrumentality  
14 satisfies each of these requirements in the claims'  
15 sentence, then it's said that the device, system, or  
16 apparatus, or instrumentality is covered by the claim and  
17 falls within the claim or infringes the claim.

18           For example, a claim that covers an invention of a  
19 table may recite within the claim itself a tabletop, four  
20 legs, and the glue to secure the legs to the tabletop.

21           In this example, the tabletop, the legs, and the  
22 glue are each separate limitations or elements of the claim.

23           Now, the beginning portion, called the preamble of  
24 a claim, often uses the word "comprising." The word  
25 "comprising," as used in the preamble of a claim, means

1 including or containing.

2           When comprising is used in the preamble, a product  
3 that includes all the limitations or elements of that claim,  
4 as well as additional elements, is covered by the claim.

5           For example, a claim to a table, again, comprising  
6 a tabletop, legs, and glue would be infringed by a table  
7 that includes a tabletop, legs, and glue, even if it also  
8 includes wheels on the ends of the legs or some other  
9 structure.

10           If a product is missing even one limitation or  
11 element required in the claim, then it does not meet all the  
12 requirements of the claim and is not covered by the claim.  
13 If a product is not covered by the claim, then it does not  
14 infringe the claim.

15           Now, you first need to understand each claim term  
16 in order to decide whether or not there is infringement of a  
17 claim and decide whether or not the claim is invalid.

18           The law says that it's my role as the Judge to  
19 define the terms within the claims, and it's your role to  
20 apply my definitions to the issues that you're asked to  
21 decide in this case.

22           Therefore, as I explained to you at the beginning  
23 of the case, I've already determined the meanings of some of  
24 the language within the claims, and I've provided those  
25 definitions to you in the chart that's included in your

1 juror notebooks. You must accept those definitions that  
2 I have given you as to those words within the claim as being  
3 correct.

4 It's your job to take those definitions and apply  
5 them to all the issues that you are deciding, including the  
6 issues of infringement and invalidity.

7 Now, for any words within the claims for which  
8 I did not provide you with a definition or construction, you  
9 should apply those terms' plain and ordinary meaning as  
10 understood of one of ordinary skill in the art, which is to  
11 say in the field of the technology of the patent at the time  
12 of the invention of the '177 patent.

13 Now, the meaning of the words of the patent claims  
14 must be the same when deciding the issues of infringement  
15 and when deciding the issue of invalidity.

16 My interpretation of the language should not be  
17 taken as an indication that I have a view regarding these  
18 issues as to infringement and invalidity.

19 Those decisions, ladies and gentlemen, are yours to  
20 make. And during your deliberations, you must apply the  
21 constructions and definitions that I have given you.

22 As I mentioned, these are set forth in the chart  
23 included in your juror notebook, but I'm going to go over  
24 with them -- with you -- I'm going to go over them with you  
25 briefly now.

1           The following term has been construed by the Court.  
2 This term or phrase from the claim is "centralized access  
3 point of a user."

4           The Court's construction is: A user's network  
5 resource that can be used to access content.

6           Another term, phrase, or clause from the claim that  
7 the Court has construed is "distributed info" --  
8 "distributed information access point."

9           The Court's construction or definition, which I've  
10 supplied to you for that term, is: A network resource which  
11 is delivered to one or more users and that enables a user to  
12 interact with a centralized access point.

13           An additional term which the Court has construed  
14 for you is "administrative interface."

15           The construction or definition I've supplied to you  
16 for that term is: A software management tool that  
17 facilitates administrative functions.

18           Also, another term that I have construed or defined  
19 for you is "manage any content."

20           The construction or definition that I've supplied  
21 to you for that term is: Manage one or more stored content.

22           Now, with that, I'll instruct you on the specific  
23 rules that you must follow to determine whether the  
24 Plaintiff has proven that the Defendant has infringed  
25 Claim 14 of the '177 patent.

1           To prove infringement, the Plaintiff, Intellectual  
2 Ventures, must persuade you that it is more likely than not  
3 that the Defendant, Great West, has infringed Claim 14.

4           You must decide whether the Defendant has made or  
5 used within the United States a product covered by the  
6 asserted claim.

7           You must compare Claim 14 of the '177 patent to the  
8 accused product to determine whether every requirement of  
9 the claim is included in the accused product.

10          To prove infringement, Plaintiff must prove by a  
11 preponderance of the evidence that the Defendant made or  
12 used within the United States an accused product that  
13 includes each and every limitation of Claim 14.

14          In determining whether the accused product  
15 infringes Claim 14, you must compare the accused product  
16 with each and every requirement recited in the claim.

17          A claim requirement is present if it exists in the  
18 accused product as I have explained the language of the  
19 requirement to you, or if I did not explain it, as it would  
20 be understood by one of ordinary skill in the art.

21          If the accused product omits even a single  
22 requirement or claim, then you must find that the accused  
23 product does not infringe that claim.

24          In patent law, a system, device, method,  
25 publication, or patent that predated the patent claim at

1 issue is called prior art.

2 Prior art may include items that were publicly  
3 known or that have been used or offered for sale or  
4 references, such as publications or patents, that disclose  
5 the claimed invention or elements of the claimed invention.

6 To be prior art, an item or reference must have  
7 been made, known, used, published, patented, or filed as a  
8 patent application before the priority date of the  
9 patent-in-suit.

10 Defendant has challenged the validity of Claim 14  
11 as anticipated by the prior art. Patent invalidity, ladies  
12 and gentlemen, is a defense to patent infringement.

13 Now, even though the U.S. Patent and Trademark  
14 Office and the examiner assigned to this patent by that  
15 office has allowed Claim 14 of the '177 patent, you, the  
16 jury, have the ultimate responsibility of deciding whether  
17 Claim 14 is valid.

18 I'll now instruct you on the rules that you must  
19 follow in deciding whether the Defendant, Great West, has  
20 proven that Claim 14 of the '177 patent is invalid.

21 To prove that Claim 14 is invalid, the Defendant  
22 must persuade you by clear and convincing evidence that the  
23 claim is invalid.

24 Now, during the course of the trial, the Defendant  
25 has presented you with prior art. In considering that prior

1 art, you may consider whether the prior art was or was not  
2 already considered by the Patent Office before granting the  
3 patent.

4 Prior art differing from the prior art considered  
5 by the Patent Office may, but does not always, carry more  
6 weight than the prior art that was considered by the Patent  
7 Office.

8 However, as I've told you, it's your job as the  
9 jury to determine the amount of weight, if any, to give to  
10 all of the evidence in this case.

11 The fact that any particular piece of prior art was  
12 or was not considered by the Patent Office does not change  
13 the Defendant's burden of proof.

14 Claims are construed the same way for determining  
15 infringement as for determining invalidity.

16 In this case, the priority date for the  
17 patent-in-suit, the '177 patent, is May the 11th, 2000.

18 Now, a number of issues relevant to invalidity must  
19 be viewed from the perspective of a person of ordinary skill  
20 in the art, that is, in the field of the asserted invention  
21 as of the effective filing date of the  
22 '177 patent.

23 It's up to you to -- to decide the level of  
24 ordinary skill in the field of the invention. You should  
25 consider all the evidence introduced at trial in making this



1 decision, including:

2 (1) the levels of education and experience of  
3 persons working in the field;

4 (2) the type of problems encountered in the field;

5 (3) prior art solutions to those problems;

6 (4) speed with which innovations are made;

7 and, (5), the sophistication of the technology.

8 A person of ordinary skill in the art is a  
9 hypothetical person who is presumed to have known all of the  
10 relevant prior art at the time of the claimed invention.

11 In order for someone to be entitled to a patent,  
12 the invention must actually be new. In general, an  
13 invention is new when the identical product or process has  
14 not been made, used, or disclosed before.

15 If an invention is not new, it is considered to be  
16 anticipated.

17 Here, the Defendant contends that Claim 14 is  
18 invalid because it is anticipated. Defendant must persuade  
19 you by clear and convincing evidence.

20 Defendant may prove anticipation by proving that:

21 (1) the invention was known or used by others in  
22 this country or patented or described in a printed  
23 publication or in this or a foreign country before the  
24 '177 patent;

25 (2) the invention was patented or designed in a

1 printed publication in this or a foreign country or in  
2 public use or on sale in this country more than one year  
3 prior to the date of the application of the '177 patent in  
4 the United States;

5 (3) the invention was publicly used, sold, or  
6 offered for sale in the United States more than one year  
7 prior to the date of the application for the '177 patent;

8 (4) the invention was described in a published  
9 application for a patent by another filed in the United  
10 States before the '177 patent;

11 or, (5), the invention was described in a patent  
12 granted on an application for patent by another filed in the  
13 United States and the application was filed before the '177  
14 patent.

15 For a claim to be invalid because it is not new,  
16 all of its requirements must have existed in a single system  
17 that predates the '177 patent or must have been described in  
18 a single printed publication or patent that predates the  
19 '177 patent.

20 Now, to understand how a patent -- excuse me, to  
21 understand how a prior art system operates, you may rely on  
22 multiple pieces of evidence to describe -- that describe the  
23 same prior art system for the purpose of finding  
24 anticipation.

25 In other words, if you find that a single prior art

1 system existed that meets every element of the claim, then  
2 that is enough to find that the claim is invalid as  
3 anticipated by the prior art.

4 The prior art must contain all of the limitations  
5 or elements of the claim arranged as in the claim.

6 The Defendant must prove by clear and convincing  
7 evidence that Claim 14 was anticipated by the prior art.

8 If you find that the Defendant has proven by clear  
9 and convincing evidence that Claim 14 was anticipated by the  
10 prior art, as I've explained the law to you, you must find  
11 that Claim 14 is invalid.

12 If you find that the Defendant has failed to prove  
13 by clear and convincing evidence that Claim 14 was  
14 anticipated by any prior art, then you must find that  
15 Claim 14 is not anticipated.

16 Now, in determining whether or not the invention of  
17 Claim 14 is invalid, you must determine the scope and  
18 content of the prior art at the time the invention was made.

19 For prior art to anticipate a claim of a patent,  
20 the disclosure in the prior art reference does not have to  
21 be in the same words as the claim, but all the elements of  
22 the claim must be there, either stated or necessarily  
23 implied so that someone of ordinary skill in the field of  
24 the invention looking at that reference would be able to  
25 make and use at least one embodiment of the claimed

1 invention.

2 Anticipation can occur when the claimed invention  
3 inherently or necessarily results from the practice of what  
4 is disclosed in the written reference, even if the inherent  
5 disclosure was unrecognized or unappreciated by one of  
6 ordinary skill in the field of the invention.

7 If you find, ladies and gentlemen, that Claim 14 is  
8 not new, as I have explained it to you, you should find it  
9 to be invalid.

10 If you find that the Defendant has infringed  
11 Claim 14 and Claim 14 is not invalid, then you must decide  
12 and consider the proper amount of damages, if any, to award  
13 to the Plaintiff.

14 I'm not suggesting which party should win on any  
15 issue. If you find that the Defendant has not infringed  
16 Claim 14 or that Claim 14 is invalid, then -- then the  
17 Defendant is not -- excuse me, then the Plaintiff is not  
18 entitled to any damages.

19 If you award damages, they must be adequate to  
20 compensate the Plaintiff for any infringement of  
21 Claim 14 -- 14 that you may find.

22 You must not award the Plaintiff more damages than  
23 are adequate to compensate for the infringement, nor should  
24 you include any additional amount for the purpose of  
25 punishing the Defendant. Damages are not meant to punish an

1   infringer.

2           Your damages award, if you reach this issue, should  
3   put Plaintiff in approximately the same financial position  
4   that it would have been in had the infringement not  
5   occurred.

6           Plaintiff has the burden to establish the amount of  
7   its damages by a preponderance of the evidence.

8           In other words, you should award only those damages  
9   that the Plaintiff establishes that it more likely than not  
10   suffered as a result of the Defendant's infringement of  
11   Claim 14 of the '177 patent.

12           Now, while the Plaintiff is not required to prove  
13   the amount of its damages with mathematical precision, it  
14   must prove them with reasonable certainty.

15           A Plaintiff is not entitled to damages that are  
16   remote or speculative. The patent laws specifically provide  
17   that damages for infringement may not be less than a  
18   reasonable royalty.

19           A reasonable royalty is the amount of royalty  
20   payment that a patentholder and the alleged infringer would  
21   have agreed to in a hypothetical negotiation taking place at  
22   a time immediately prior to when the infringement first  
23   began.

24           In considering this hypothetical negotiation, you  
25   should focus on what the expectations of the patentholder

1 and the alleged infringer would have been if they'd entered  
2 into an agree -- into an agreement at that time and had they  
3 acted reasonably in their negotiations.

4 In determining this, you must assume that both  
5 parties believed Claim 14 of the patent-in-suit was valid  
6 and infringed and that both parties were willing to enter  
7 into an agreement.

8 The reasonable royalty that you determine must be a  
9 royalty that would have resulted from the hypothetical  
10 negotiation and not simply a royalty that either party would  
11 have preferred.

12 As I've said, in this case, the Plaintiff seeks a  
13 reasonable royalty. A reasonable royalty must be in the  
14 form -- excuse me, a reasonable royalty may be in the form  
15 of a lump-sum amount where the patent owner receives a  
16 single, upfront payment as the royalty payment. You must be  
17 careful to ensure that the award is no more or no less than  
18 the value of the patented invention.

19 The patent law does not allow you to use the patent  
20 of an entire product or service or the value of the entire  
21 market to determine the damages unless you find that the  
22 Plaintiff has proved that the patent feature of the product  
23 drives the consumer demand for the entire product or  
24 service.

25 Evidence of things that happened after infringement

1 began can be considered in evaluating the reasonable  
2 royalty, only to the extent that the evidence aids in  
3 assessing what the royalty would have resulted -- what  
4 royalty would have resulted from the hypothetical  
5 negotiation.

6 In this case, the parties generally agree on when  
7 and between whom the hypothetical negotiation for Claim 14  
8 of the '177 patent would have taken place.

9 The parties also generally agree that the  
10 hypothetical negotiation would have resulted in a single  
11 lump-sum royalty for the life of the patent.

12 In determining the reasonable royalty, you should  
13 consider all the facts known and available to the parties at  
14 the time the infringement began.

15 Some of the kinds of factors you may consider in  
16 making your determination are:

17 (1) the royalties received by the Plaintiff for  
18 licensing of the '177 patent, proving or tending to prove an  
19 established royalty;

20 (2) the nature and scope of the license as  
21 exclusive or non-exclusive or as restricted or  
22 non-restricted in terms of territory or with respect to whom  
23 the manufactured product may be sold;

24 (3) the duration of the patent and the term of the  
25 license;

1           (4) the utility and advantages of the patented  
2 property over the old modes or devices, if any, that have  
3 been used for working out similar results;

4           (5) the nature of the patented invention and the  
5 character of the commercial embodiment of it as owned or  
6 produced by the licensor and the benefits to those who have  
7 used the invention;

8           (6) the extent to which Defendant has made use of  
9 the invention and any evidence probative of the value of  
10 that use;

11           (7) the portion of the realizable profits that  
12 should be credited to the invention as distinguished from  
13 the non-patented elements, the manufacturing process,  
14 business risks, or similar features or improvements added by  
15 the Defendant;

16           (8) the opinion and testimony of qualified experts;

17           (9) the amount that the licensor -- excuse me, a  
18 licensor, such as the Plaintiff, and a -- a licensee, such  
19 as the Defendant, would have agreed upon at the time the  
20 infringement began if both had been reasonably and  
21 voluntarily trying to reach an agreement, that is, the  
22 amount which a prudent licensee who desired as a business  
23 proposition to obtain a license to manufacture and sell a  
24 particular article embodying the patented invention would  
25 have been willing to pay as a royalty and yet be able to



1 make a reasonable profit and which amount would have been  
2 acceptable by a prudent patentee which was willing to grant  
3 a license.

4 Now, no one of these factors is dispositive, and  
5 you can and should consider the evidence that has been  
6 presented in this case on each of these factors.

7 You may also consider, ladies and gentlemen, any  
8 other factors that in your mind would have increased or  
9 decreased the royalty the infringer would have been willing  
10 to pay and the patent owner would have been willing to  
11 accept, acting as normally prudent business people.

12 The law requires that any damages awarded to the  
13 Plaintiff correspond to the value of the alleged invention  
14 and not the value of features of Defendant's accused web  
15 portal that are not covered by Claim 14 of the '177 patent.  
16 This is particularly true where as here, the accused product  
17 has multiple features and multiple components.

18 Plaintiff bears the burden of establishing the  
19 amounts attributable to the patented feature. That is,  
20 Plaintiff must give evidence tending to separate and  
21 apportion between the patented features and the unpatented  
22 features, and such evidence must be reliable and tangible  
23 and not conjectural or speculative.

24 In determining the amount of damages, you must  
25 determine when the damages begin. No damages can be awarded

1 for any infringement that occurred before the date the  
2 patent was issued. Damages commence on the date the  
3 Defendant began the alleged infringement of Claim 14 of the  
4 '177 patent.

5 Now, with these instructions, ladies and gentlemen,  
6 we're ready to hear closing arguments from the attorneys in  
7 this case.

8 Plaintiff may now present its first closing  
9 argument to the jury.

10 Mr. Gilliland, would you like a warning on your  
11 time?

12 MR. GILLILAND: If I could reserve 10 minutes for  
13 rebuttal and get a three-minute warning on the opening?

14 THE COURT: So 30 minutes total. When you've used  
15 17 minutes, I'll warn you, and then you'll complete in about  
16 20 minutes with 10 minutes remaining for rebuttal?

17 MR. GILLILAND: Yes, Your Honor.

18 THE COURT: Okay. You may proceed with your first  
19 closing argument.

20 MR. GILLILAND: May it please the Court.

21 Ladies and gentlemen, first things first. I thank  
22 you very much for your time and attention over these last  
23 few days.

24 As I said at the beginning of this case, what  
25 you're doing now is the second highest service that a

1 citizen of our country can provide, the first, of course,  
2 being the armed forces. And so thank you for that and thank  
3 you for being a very important part of this very important  
4 process and helping us resolve a big dispute that's been  
5 going on for several years.

6 Now, I told you at the beginning of the case that  
7 we're here because the Defendant, Great West, failed to  
8 ensure that it was not infringing someone else's patent and  
9 then refused to accept responsibility for what it had done.

10 And we've walked you through the evidence, and  
11 we've proven that to you. This case, as we said at the  
12 beginning, it's about the '177 patent and how the Defendant,  
13 Great West, is using that patent.

14 And when you get back to the jury room, there are  
15 going to be three questions that you have to answer, and the  
16 Court went over those -- His Honor went over those with you.

17 And the first is a question about infringement.

18 The second is a question about validity.

19 And then the third is a question about damages.

20 And so I'd like to spend a few minutes talking to  
21 you about each of those questions.

22 Now, the first question is the one that we bear the  
23 burden of proof on, and that's that burden of proof by a  
24 preponderance of the evidence. And it's the more likely  
25 than not. Have we presented evidence that indicates that

1 it's more likely than not the Defendant infringed the  
2 patent?

3 And if we can, please bring up Plaintiff's  
4 Exhibit 1?

5 Plaintiff's Exhibit 1 is the patent, which you've  
6 had in your notebooks all week and which you -- if you  
7 wanted, you can request the actual exhibit back in the jury  
8 room.

9 But the issue in this case and the thing that we  
10 are all focused on is on the last page, and that's  
11 Claim 14. And Claim 14 --

12 If we can catch Claim 11 with it, as well,  
13 Mr. Cartwright?

14 Claim 14, as you've heard, depends from Claim 11.  
15 So Claim 14 includes everything from Claim 11 and the  
16 additional requirements of Claim 14.

17 And this -- as you can see when you read the claims  
18 themselves and when you read the title of the patent, that  
19 it is not about footballs and soccer balls.

20 It's very specific. It's an apparatus for  
21 distributing content through one or more distributed  
22 information access points to a centralized access point of  
23 the user that then has all of these requirements that you  
24 have to prove or that you have to find, and we have to show  
25 you under the burden of proof.

1           And we've shown you all of that, and we've shown  
2           you that they can infringe this patent in really two  
3           distinct and different ways.

4           You've heard the words thrown to you about a  
5           Drivers List By Policy and a Reporting Data Policy. Those  
6           are two independent ways that the Defendant's web portal  
7           infringes this patent. Either one of those proves  
8           infringement.

9           Now, the first one of those, the Drivers List  
10          Policy that we've talked about, that's the one where an  
11          agent --

12          If we could bring up Exhibit GWX-482, please?

13          The Drivers List Policy is where an agent of  
14          Great West can go in and modify, add, or change information  
15          about a user. GWX-482 is an exhibit in this case. You can  
16          ask for it back in the jury room. You can read how the  
17          agent portal operates.

18          And if we go to -- it's physical Page 39 of this  
19          document.

20          If we go to 39, it explains all the information  
21          about what an agent can do regarding drivers and how they  
22          can enter information about them, how they can modify them,  
23          order their motor vehicle records, and all of that sort of  
24          information.

25          And Dr. Smith, he walked you through all of that

1 and how it fits with the claim elements of the patent. And  
2 you also heard that all of that information is very  
3 important because it ties back to underwriting and how much  
4 risk is Great West taking on when they write insurance for a  
5 specific driver.

6 And so all of that information is -- is the  
7 foundation, essentially, of their business, and that's one  
8 way they infringe.

9 The other way they infringe is when an employee  
10 logs in to the system.

11 And if we could bring up GWX-484?

12 Now, this is the second type of infringement or the  
13 second infringement they engage in. And it's when an  
14 employee uses the portal, when an employee logs in to the  
15 portal and does what's been referred to as a Reporting Data  
16 Policy.

17 And if we could go to physical Page 79?

18 There you go.

19 And this is the Report Rate Work list. And  
20 starting on this page and continuing through the next page  
21 and for several pages after that, it describes how an  
22 employee can go in and enter data about miles driven, units,  
23 et cetera.

24 If we can go to the next page, please,  
25 Mr. Cartwright?

1           And see here at the top of the page, you can see  
2 where they get to enter all of that information. And  
3 there's been some discussion and some dispute about whether  
4 or not they're creating new policies or just saving over old  
5 policies. But you can see right here -- let me see, if --  
6 in Item No. 2 where it's describing how it operates, it  
7 says: After a report date is selected, some changes occur.  
8 The availability of the report type, actual estimate, and  
9 correction is based on previous report types entered for the  
10 selected month.

11           But then it says: The equipment unit count fields  
12 and the applicable combined rates are populated. That means  
13 that content is already filled in on that form.

14           And when the employee goes in, they're modifying  
15 content. They're managing the content just like Claim 14  
16 requires.

17           And this, GWX-484, is also an exhibit you can  
18 request, and you can see how the employee portal works.  
19 And, again, this is starting around Page 76 that it goes  
20 through this reporting date of policy.

21           Now, either one of those ways will infringe the  
22 patent. And so what evidence did we put on to help  
23 demonstrate this to you?

24           Well, we brought in Dr. Smith, and he took the  
25 witness stand, and he walked methodically through all of the

1 claim elements.

2 And if we could bring up the -- the Claim 14 slide.

3 And you'll recall this slide from Dr. Smith's  
4 testimony. And this is -- Dr. Smith broke out each of the  
5 elements to make it easier to follow.

6 But the first part here, A through E, preamble  
7 through E, are the elements of Claim 11, which, you know, as  
8 you see in Claim 14, it says the apparatus of Claim 11 with  
9 the additional requirement of Claim 14.

10 And Dr. Smith went through and methodically showed  
11 where he looked at evidence, where he looked at deposition  
12 testimony, where he looked at documents like the two we just  
13 saw and identified every element that was in Claim 14 for  
14 you. And he did that to satisfy our burden of proof that  
15 the Defendants infringe the patent.

16 And then the -- the Defendants, as -- as you  
17 recall, they brought up some issue about whether drivers are  
18 users. And even Mr. Foote, when he walked you through all  
19 that, Mr. Foote testified, he made the point that, look, the  
20 user system stores information in what's called the LDAP.

21 And if we could see from the big deck,  
22 Slide No. 11?

23 And this was the high-level architecture of how  
24 their system operates, and the user information -- even  
25 Mr. Foote agreed with Dr. Smith, the user information gets



1 stored up here in the LDAP.

2 And you recall, there are three different types of  
3 user information that he talked about. There were some  
4 abbreviations that went with them. There was AGT for agent,  
5 CUS for customer, and EMP for employee. Those were the  
6 three types of users that use the system.

7 Now, the data that's important for the work that  
8 Great West does, and that's the policy data, the types of  
9 wrecks that have occurred, et cetera, all of that data gets  
10 stored and used in a completely different place. And that's  
11 where who a driver is, how long he's been working, what his  
12 motor vehicle record looks like. Even Mr. Foote told you  
13 all that gets stored in a completely different place.  
14 That's down here in this IBM DB2 and VSAM tables. That's  
15 completely separate and different than the user data that's  
16 up in the LDAP.

17 And, now, they're trying to confuse you. They're  
18 trying to pull a fast one on you by saying, well, drivers  
19 are users. Well, sometimes drivers are users, but that's a  
20 different type of data in this system if somebody is a user.  
21 They fall under one of those three things.

22 And a driver, as far as this system goes, is a  
23 piece of important separate content that's necessary for  
24 them to underwrite claims.

25 Now, the Defendants also brought Dr. Crovella in,

1 and I don't know if you caught it. You had to really be  
2 paying attention, but he did give you a non-infringement  
3 opinion, and it took about two questions where he just said,  
4 no, we don't infringe. He didn't do all the work that  
5 Dr. Smith did. He didn't walk you through all the evidence  
6 and claim elements to show that this is why. He simply said  
7 no and moved on.

8 And as His Honor said, you are the judges of the  
9 credibility of the witnesses in this case. And so it's up  
10 to you to decide whether or not to believe Dr. Crovella.

11 And when you're making that decision, remember,  
12 unlike what His Honor said, where the meanings of the claim  
13 terms mean the same thing, whether it's infringement or  
14 validity, Dr. Crovella said things may mean something  
15 depending on whether he's giving his deposition months ago  
16 or testifying live in court. He was happy to change what  
17 different -- what content was and what his opinions were  
18 based on what was going on around him.

19 So I think you'd agree with me that Dr. Crovella  
20 was completely unbelievable when it came right down to it.

21 And because of that, when you get to the first  
22 question on the jury charge, I believe we've provided more  
23 than a preponderance of the evidence that either one and  
24 both of those two systems infringe. And so when you address  
25 Question No. 1, your answer should be yes.

1           And then that will bring us to Question No. 2 which  
2 is validity. And here's where the burden shifts to the  
3 Defendants because they're asking you to tear this patent up  
4 for all time. Because if you find that this patent, the  
5 '177 patent is invalid, it's invalid for everything, for all  
6 situations, not just this case. And that's why they have a  
7 higher burden because the patent has been checked out by the  
8 examiners at the Patent Office.

9           And what do they present you for -- for their  
10 validity argument? Well, again, they rely on Dr. Crovella  
11 who -- words meaning what he wants them to mean whenever  
12 it's convenient.

13           And then they showed you some diagrams that you can  
14 have back in the jury room.

15           Can we bring up GWX-122?

16           GWX-122 is their anticipation reference. It's the  
17 Pellegrino patent. And if you ask for it, you can have the  
18 whole patent, not just the screenshots the Defendants gave  
19 you.

20           And if you look at the whole patent, you'll see  
21 that it does not disclose all of the claim elements.  
22 Everything that was on that chart I showed you, everything  
23 in Claim 11, and everything in Claim 14 has to be in  
24 Pellegrino for it to invalidate the patent. That's what  
25 anticipation means.

1           And, one, Dr. Crovella did not check all those  
2 boxes.

3           And, two, whenever they showed you any information  
4 about Pellegrino, they showed you their own colored-up and  
5 modified versions of the -- the images and figures in there.

6           If we could go to the -- Slide 43 of the big deck?

7           This is one of the images they showed you. This is  
8 not the Pellegrino image. What this is, is their version of  
9 the Pellegrino image with things added and things  
10 highlighted. And that's because they know Pellegrino by  
11 itself doesn't get them there.

12           And all of their arguments about validity at the  
13 end of the day amount to little more than lawyer fluff, much  
14 like Mr. Ponder's marketing fluff. This time we've got  
15 lawyer fluff.

16           And so for that reason when you get to  
17 Question No. 2 on validity and you consider the lawyer fluff  
18 that they put up and Dr. Crovella's testimony, we'll submit  
19 to you that that doesn't come anywhere close to clear and  
20 convincing evidence, to an abiding conviction that it's  
21 highly probable.

22           They failed to meet their burden. They failed to  
23 come anywhere close because Pellegrino doesn't get them  
24 there even with Dr. Crovella who is willing to say whatever  
25 he needs to say.

1           And so when you get to Question No. 2, your answer  
2 should be, no, they have not proven that Claim 14 of the  
3 '177 patent is invalid.

4           And so when you're done with that, then you need to  
5 move to the final question. And that involves the damages  
6 to assess in this case. And His Honor told you that in this  
7 case, we're talking a reasonable royalty. And you've heard  
8 that throughout the case.

9           And also, this -- back to damages is when we get  
10 back to the preponderance of the evidence standard where  
11 it's our burden to prove more likely than not what the  
12 damages are.

13           And so consider the evidence that we've presented  
14 to you.

15           One -- if we could bring up Plaintiff's  
16 Exhibit 212?

17           This is Mr. Ponder's marketing fluff, as he called  
18 it. But even Mr. Ponder's marketing fluff notes that in the  
19 second sentence up here in the first paragraph that the  
20 newly designed insured portal allows insureds to access  
21 information on their own without needing to call their  
22 agent.

23           And, of course, the portal is going to give the  
24 agent the ability to access information without needing to  
25 call anybody. We have their own admission that the portal

1 eliminates the need for phone calls.

2 And we also have -- and you can request this back  
3 in the jury room -- Plaintiff's Exhibit 213 that discusses  
4 the portal. This is Mr. Ponder talking to his boss.

5 But on the second page -- third page, excuse me,  
6 you see right there in the middle of the page it notes that  
7 this agent portal is critical to business development, and  
8 that's why they spend considerable time and attention and IT  
9 resources on it.

10 So Mr. Lasinski said: Look, it is valuable. They  
11 recognized that it's valuable. They recognized that it  
12 helps avoid phone calls. So let's look at how it helps  
13 avoid phone calls.

14 And so Mr. Lasinski walked us through --

15 Could we bring up Slide 38, please?

16 He walked us through a calculation of how he came  
17 up with the number.

18 I'm sorry, maybe the next one, the one with the  
19 full calculation on it.

20 31, my apologies.

21 He walked us through Slide 31, and he said, look,  
22 when you look at the exhibits in this case -- for example,  
23 Plaintiff's Exhibit 233 -- over just the period from when  
24 the lawsuit was filed, January 2015 up until August of 2018,  
25 when he had to put together his estimate of damages, his

1 valuation, he looked at the use, and he looked at how many  
2 times people had hit the portal. And he had taken documents  
3 like Exhibit 233, and he had added up all of those portlet  
4 views.

5 Now, the Defendants are trying to say -- or the  
6 Defendant is trying to say he overvalued things. Well,  
7 Mr. Lasinski, he didn't take all of those views. He didn't  
8 take the 35.7 million times people went to this portal.

9 THE COURT: Counsel, you've used 17 minutes.

10 MR. GILLILAND: Thank you, Your Honor.

11 He didn't take that number and multiply by the cost  
12 of each phone call. That -- then we'd be in here asking for  
13 something like a hundred million dollars. He didn't. He  
14 apportioned it down. He said, look, we've got to take the  
15 landing pages, where they go when they first hit.

16 We've got to take out when employees look at it  
17 because we assume employees may be responding to an agent,  
18 and so we don't want to double count. Or employees may be  
19 using it for internal products. But he reduced that all the  
20 way down to just what was an estimate of how many unique  
21 times somebody had looked at those pages.

22 And then he calculated, well, how long does an  
23 average phone call and how much per minute does that cost.  
24 And because Great West didn't keep the data, he used BITCO  
25 data, their sister company. And he came up with 2.75 per

1 phone call, and that got him to 30 million.

2 But then he gave them the benefit of a 12 percent  
3 interest rate and knocked that even farther down to the 20.5  
4 million and subtracted out the cost. He did a lot of work  
5 to come up with that number. And when he did and when --  
6 and I would submit to you when you get to Question No. 3 and  
7 you're considering damages, that a reasonable royalty for  
8 use of this invention should be \$20,300,000.00.

9 And you've got all the work and Mr. Lasinski's  
10 credibility to help you understand that. And I would  
11 suggest that Defendant's expert's short-circuit rendition of  
12 just give them what they paid for -- well, you know -- you  
13 know better than that.

14 They bought this patent in 2008 when it was just an  
15 application. It was just a glimmer in the eye of -- at that  
16 time when they acquired it, Intellectual Ventures, that it  
17 would ever result in a patent. And he wants you to give him  
18 that number. You know that's not right, especially when  
19 they've used it as much as these Defendants have. So don't  
20 let them play you. Don't let them mislead you with lawyer  
21 fluff and just make them accept responsibility for their  
22 infringement.

23 Thank you.

24 THE COURT: All right. Defendant may now present  
25 its closing argument.



1           Mr. Bettinger, would you like a warning on your  
2 time?

3           MR. BETTINGER: Your Honor, three minutes, please?

4           THE COURT: All right. I'll warn you with three  
5 minutes remaining.

6           You may proceed.

7           MR. BETTINGER: Thank you, Your Honor. Thank you  
8 to all the Court personnel through the last couple days.

9           Ladies and gentlemen, I know I speak for everyone  
10 on our team in thanking you for your time, your attention,  
11 and your patience. The last few days have been busy.  
12 There's been a lot of new terms and a lot of new faces. We  
13 appreciate that you've taken the time to sit through and  
14 listen to the evidence in the case.

15           As Judge Gilstrap said at the beginning of the case  
16 in his opening remarks, our country is unique in the way we  
17 resolve disputes. We resolve them to a jury, a jury of our  
18 peers. We resolve them with our fellow citizens, and you  
19 are our fellow citizens.

20           This is our opportunity to review the evidence that  
21 has been presented over the last three to four days and put  
22 it in order and make sense of it.

23           I emphasize evidence because Judge Gilstrap has  
24 told us it is your job to make a decision in this case based  
25 on the evidence.

1           Ladies and gentlemen, attorney argument is not  
2 evidence. Attorney questions that are worded in a way to  
3 suggest that a witness is somehow changing the truth,  
4 accusations that you're switching horses in the case,  
5 accusations, lawyers are engaging in fluff, accusations that  
6 a defense wasn't disclosed and it's being disclosed for the  
7 first time, that is not evidence. None of that is. It is  
8 simply attorney bluster.

9           From the outset of this case, our goal has been to  
10 provide you with evidence, evidence that you need to make a  
11 decision in the case. We brought the witnesses. We put  
12 them on the stand so that you could look them in the eye,  
13 size them up, and figure out what is really going on here.  
14 In other words, we showed up. We put Mr. Foote and  
15 Mr. Ponder on the stand.

16           You also had an opportunity to see Mr. Arends on  
17 video. Seeing these witnesses, getting a real feel for who  
18 Great West is, what it does, that's evidence. Learning that  
19 all three of the witnesses, Foote, Ponder, and Arends, each  
20 have worked for Great West for around 25 years --  
21 25, 24, and 27 years, respectively. That says something  
22 about a company. That says something about the witnesses  
23 when you're there that long.

24           We showed up. We are the ones who explained the  
25 patent. We are the ones who gave you some idea what

1 Claim 14 was. The elements it requires, a centralized  
2 access point that allows one to manage content that is  
3 contributed by them.

4 By doing so, we signalled to IV, go ahead, question  
5 our witnesses, ask the questions you want. We'll answer  
6 your questions straight up. That's what presenting evidence  
7 at trial is all about.

8 We explained our website. We explained it has  
9 three portals, one for the truckers, one for agents, and one  
10 for employees. We showed you the document. Showed you our  
11 copy. There -- showed you more documents. We have nothing  
12 to hide. We put it all on the table, and that's the thing.  
13 When you show up, there is nothing to hide. It's there for  
14 everyone to see, for you to see, to take a look to make a  
15 decision in this case.

16 Well, that's not what happened with IV. They were  
17 nowhere to be found. They came into this court asking for  
18 \$20.3 million and did not have the common decency to show  
19 up, to take the witness stand, and answer questions.

20 The way I was raised, you want that kind of money,  
21 show up, tell me how, tell me why. Let me -- let me take a  
22 look in your eyes. Let me see how you testified. Let me  
23 see. Let me get a real feel for who you are. That's what  
24 you do when you come in and ask for that kind of money. You  
25 come into court, and you explain it. Why would you win?

1 Why IV, why you should win? Get on the stand and explain  
2 it.

3 Let this -- let the ladies and the gentleman of the  
4 jury, let you take a look at the witness, figure out where  
5 they're coming in, look them in the eye, see what type of  
6 person they really are. That's how you present evidence.

7 What is not evidence and in my view just not right  
8 is to send in lawyers and paid experts while you sit in some  
9 high rise office building in Seattle waiting for a big score  
10 on a patent that you bought for a couple hundred thousand  
11 dollars.

12 Folks, that's not the way it works. Have the  
13 courtesy, the decency to show up and make your case. And  
14 when the lawyers go into court, don't have them try and  
15 belittle witnesses who do show up.

16 Remember when IV's counsel was questioning  
17 Mr. Foote -- if we could put Slide 2 up -- the guy who had  
18 been here from the start of trial, and he suggested that  
19 Mr. Foote was somehow shading his testimony. You've been  
20 doing your very best so far not to harm through your  
21 testimony at Great West.

22 And Foote gave him really real answers. He's a  
23 real guy who said: No, I've been trying to answer  
24 accurately and honestly.

25 Come on, you're going to go after Mr. Foote. The

1 guy doesn't have a mean bone in his body. He's been sitting  
2 in court this entire time. He answered every question put  
3 to him.

4 But it got worse. Remember, counsel suggested  
5 Mr. Foote was somehow changing the inflection in his voice  
6 when he answered no. Really? That's all you've got is to  
7 try to smear Mr. Foote? That's not evidence, and that's  
8 just not right.

9 Here's the deal. The idea of buying a patent and  
10 then hiring lawyers and experts to go out and try to make  
11 money on it. Well, that might work on Wall Street. But not  
12 here where decisions are based on evidence.

13 So what I want to do this morning is review the  
14 evidence that was presented to allow you to make a decision  
15 in this case because your decision is based on evidence.

16 And I want to focus on two issues, the infringement  
17 and the invalidity evidence because as you heard yesterday,  
18 you don't reach the issue of damages if this patent is not  
19 infringed and if this patent is invalid.

20 So let's turn first to infringement and look at  
21 that evidence.

22 And just to orient ourselves, remember, Claim 14  
23 requires you have a centralized access point, and the two  
24 have been identified in here. There's been -- the parties  
25 agree, it's the agent portal and it's the Drivers List By

1 Policy page on the agent portal, okay, right? That's the  
2 first thing they say we -- that infringes.

3 The second thing they say is the employee portal,  
4 and it's the homepage. Nothing else. Those two pages.  
5 That's all that's at issue in this case. Do those two pages  
6 infringe Claim 14? Those are our centralized access points.

7 If we could go to the next slide?

8 And then that centralized access point, you have to  
9 be able to manage and contribute content. You have to  
10 manage and contribute content.

11 So the centralized access point, those two pages,  
12 you have to show that you manage content -- you contribute  
13 it and that you manage it.

14 Well, who took you through -- what's content? Did  
15 you ever hear one word from them on -- as to what content  
16 is? We took you through, hey, look, there's this -- the way  
17 the patent talks about is content is, it's these articles.  
18 It tells you something. That's what content is.

19 And we showed you Exhibit 45 from the patent. The  
20 patent is PX-001. And then -- and showed you, hey, this  
21 paragraph here, that's content. And then we asked the same  
22 question of their expert, Dr. Smith.

23 We said: Dr. Smith, at Figure 45, are you familiar  
24 with that screen called clearing clogged drains?

25 He says: Yes, I've seen it before.

1           And then shows the content contribution which is  
2 clearing clogged drains. That's content, correct?

3           He says: Yes, that's correct.

4           So you agree that Screen 45 is showing us content?

5           Yeah, it shows us content.

6           We're the one who explained that. That's what  
7 content is. It's those articles. It's something that  
8 says -- it's a description. That's how the patent uses the  
9 term "content."

10           If we could go to the next slide?

11           And then what we also know is what content is not,  
12 and this is the uncontested facts. And as the jury  
13 instructions Your Honor has read, is that's like it was  
14 proven in court here. What content does not include, it  
15 can't be those articles. It does not include information  
16 about users. That's a fact and proven here in this court.  
17 That's what the instructions say. Content does not include  
18 information about users.

19           So if we could go to the next slide?

20           Both experts agreed.

21           We asked -- asked Smith: You agree scope of  
22 content does not include information about users?

23           Dr. Smith: Yes.

24           Professor Crovella: My opinion, and it's  
25 consistent throughout all my reports, is that information

1 about users is not content.

2 The next one.

3 And then, you know, further on, we had this whole  
4 point about is a driver a user -- driver is a user, and why  
5 that's a problem. And it kills their case is the drivers  
6 are users. Information about users isn't content, right?  
7 So they had to try to fight hard on that. Oh, we can't --  
8 we can't have the drivers be users because once that  
9 happens, all that information is information about the  
10 use -- the driver who's a user, then it's not content.

11 But -- but on the -- their first witness they put  
12 up, Dr. Smith, we asked him point blank: So the driver is a  
13 user of the Great website -- Great West website, correct?

14 And his answer is: Yes, correct.

15 Right there he's telling us, he knows drivers are  
16 users of the website, for goodness sake. Earlier -- you  
17 heard today they're not even going to fight it anymore.  
18 They -- they gave up.

19 And so -- all right. And as a user of that  
20 website, they have a user name password and a user name,  
21 correct?

22 Correct.

23 So, now, they're a user?

24 And he says: Correct.

25 So the drivers are users of the website.



1           If we could go to the next slide?

2           We asked the same question of Mr. Foote. He would  
3 know best. He designed the website. We brought him in  
4 here, and we asked: Hey, so once the driver is logged in,  
5 can they use the website?

6           He goes: Yes.

7           Is there any reason they couldn't do that?

8           And he says: No. They can do that.

9           And, again, we asked: Once the trucker is granted  
10 credentials, could they become a user of the website?

11          Yes.

12          So that's out. We know users include the drivers.  
13 Drivers are users of the website.

14          If we could go to the next slide there?

15          So why does that matter? Because here's the first  
16 page that they say is the centralized access point, Drivers  
17 List By Policy. It's GWX-494. GWX-494 is the Driver List  
18 By Policy.

19          And you recall the testimony from Mr. Foote, if you  
20 click on that driver name -- in this one Anthony Made over  
21 on the left -- it takes you to the screen called Driver  
22 Detail, which is GWX-493 -- GWX-493.

23          And so what I want to do is walk you through --  
24 okay, you click on that driver. That information is there  
25 on the Driver List By Policy. What can an agent do? What

1 can they do to that page because that's where they're  
2 claiming the content is that has to be modified?

3 So let's -- if you click on that name from -- you  
4 go to GWX-493, and in the agent manual, which is Exhibit 482  
5 at Page 49, those -- the different categories in the driver  
6 detail are listed in what they call collapsed form. They  
7 show you the different areas where you can go in and what  
8 you can do with the -- with the information in the Driver By  
9 Policy List.

10 And there's only three buttons, and you heard this  
11 testimony from Mr. Foote. There's only three buttons that  
12 you can click on to do anything there. There's an edit  
13 button for the driver personal information. There's an add  
14 license for the licenses. And there's an add account for  
15 the Great West employment information.

16 So if they have any case at all, if you're going to  
17 have to modify content, you got to -- it's got to be through  
18 one of these three buttons. You have to be able to click on  
19 one of those three buttons to go in and modify the content  
20 because you can't get to anything else.

21 So let's take a look at what each of the three  
22 buttons are.

23 And if we could, please, go to the next slide.

24 So when you click on that Driver Personal  
25 Information, you click on that button Edit, it takes you --

1 and you can see this in the -- in the agent manual, 482 at  
2 Page 51 -- it takes you to the Update Driver Personal  
3 Information where you can go in and update first name,  
4 middle name, last name, suffix, gender, date of birth, years  
5 of experience. That's all you can update.

6 Well, folks, that's information about a user. We  
7 know that the truckers are users, and that's information  
8 about a user. So it can't be content. That's been our  
9 position from the outset. It can't be content under their  
10 own patent because it's information about a user.

11 If we could hit the next slide?

12 And even Dr. Smith admitted: If all you're doing  
13 is managing information about a user, you are not managing  
14 content, correct?

15 And he said: Yep, I'd agree with you on that.

16 So if all you're doing is managing information  
17 about a user, the driver's name, a driver's date of birth,  
18 you're not managing content. If you're not managing  
19 content, you're not infringing Claim 14.

20 Mr. -- Dr. Smith went further.

21 The next slide, please.

22 If all you're managing is information about users,  
23 you're not managing content, correct?

24 Correct.

25 And if you're not managing content, you can't

1 infringe, correct?

2 That would be correct.

3 There was more evidence.

4 If we could go to slide -- the next slide.

5 So then he said, well, okay -- well, then,  
6 information about users, it's not content. So then what did  
7 Dr. Smith do? He had to take a position that makes  
8 absolutely no sense in this case.

9 And I asked him straight out: So just to be clear,  
10 it's your position that all those entries, first name,  
11 middle name, last name, suffix, gender, all that, for a  
12 driver who has password and user name is a user of the Great  
13 West system, that information about that user is not  
14 information about that user?

15 I asked him: Is that your position?

16 And he said: Yes, that's not information about the  
17 user.

18 Come on. That's exactly what it is. It's the --  
19 the title of the -- of the thing says information about  
20 drivers. It's exactly what it is, but it forces them into  
21 this position. It makes no sense at all where you're having  
22 to say personal information about a user is not user  
23 information.

24 So I -- the position has never made any sense, and  
25 Dr. Smith had to give it up in the -- in his testimony.

1           If we could hit the next slide, please?

2           The second button you can hit is Add License to  
3 Driver. That's the second area. But there, you can't  
4 modify any existing content. All you can do is add a  
5 driver's license. And it was undisputed in this case, just  
6 adding information is not managing it. Just adding  
7 information does not mean you're managing. You'd have to  
8 take information that exists and go in and do something to  
9 it to manage it.

10           If we show on the -- and this is, by the way,  
11 GWX-490. If you want to see that Add License to Driver,  
12 it's GWX-490.

13           If we go to the next slide.

14           We asked both experts: You can't delete the old  
15 license. You can only add a new one, right?

16           That's correct.

17           So you can't edit any -- or delete any of this  
18 driver's license information?

19           No.

20           So you're not managing anything by adding a  
21 driver's license?

22           And Dr. Smith said the same thing -- if you go to  
23 the next slide -- we asked: So adding a user is not  
24 managing; it's contributing; is that right?

25           Yes. Adding the user is not managing, it's

1 contributing.

2           So adding a license is not managing.

3           Okay. That leaves one more button that you can  
4 click to do anything to try to establish that you're  
5 managing content.

6           If we could go to the next slide?

7           And that's the Update Employment Information. You  
8 can -- you can click on that button. That was the testimony  
9 of Mr. Foote. And at GWX-482 at Page 57, we look, and  
10 that's the only information you can update is the customer,  
11 the status, and the hire date. It's information about a  
12 user. That's all you can do.

13           And this is so far removed from what content is in  
14 the patent, which is an article. But even if you go down  
15 this road, this is the only thing that you can change is  
16 this information. That's not content, so under Claim 14,  
17 you're not managing content. And that's what our position  
18 has been all along.

19           So those are the three buttons where you can do  
20 anything.

21           If you look at the other four -- on the next slide,  
22 please.

23           Oh, and Dr. Smith agreed: You're aware, sir, that  
24 when a driver is deleted from -- so if you delete a driver  
25 from the Drivers By Policy List, they're not removed from

1 the website?

2 He agreed: They're not removed.

3 So you're not getting rid of a driver. You're just  
4 removing them from attached to that policy, and Mr. Foote  
5 said the same thing.

6 You see down at the box, there's a sentence: After  
7 the customer relationship has ended, the driver is still on  
8 the Great West master list.

9 Do you see that?

10 Yes.

11 What does that mean?

12 Well, we can't lose that information, so we do not  
13 delete the driver.

14 And then he went on to explain why.

15 You can't argue, oh, you're managing because you're  
16 deleting a driver. Because you're not. You're not deleting  
17 a driver. It remains in the system. You're detaching them  
18 from a policy.

19 So if we could then go to slide -- the next slide?

20 The other four: Great West Driver Status  
21 Information, General License Information, MVR Violations,  
22 and Great West Claims and Reported Incidents.

23 The testimony was consistent from both witnesses  
24 that you can't do anything there. You can't -- you can't  
25 edit. You can't delete. You can't touch any of that

1 document. And as an example, if we go -- for example, just  
2 the status information, Dr. Smith: So for this information,  
3 the agent can't do anything to change that?

4 And he says: No, not -- not from this screen.

5 And Mr. Foote agreed. He said: Can the agent  
6 delete any of this information?

7 No.

8 From any other screen?

9 No.

10 And the testimony was consistent for all four of  
11 those, the MVR screen and -- and the others.

12 So where does that leave us in -- and if you could,  
13 Mr. Simmons, go to Slide 33?

14 I'm sorry, go back, please, to 20 -- yeah.

15 That then leaves us with looking at the Report  
16 Rates on -- which is Slide 28. And when we go to the Report  
17 Rates, which is the other one, the testimony was consistent  
18 across the board. You're only creating new reports. You  
19 can't do anything with the old reports. They have to stay  
20 in the system. It's required by state regulations. You  
21 can't get rid of any of this information. So you go to  
22 change anything here, you keep the old report, you have to  
23 create a new report.

24 If we could go to Slide 29, please?

25 Dr. Smith agreed with us. So each time that a new



1 policy is created, the old policy is kept, correct?

2           Yep, that's my understanding.

3           So you would be adding a new policy -- the  
4 correction would be adding a new policy?

5           Okay. I agree.

6           It's a new policy. It's not managing an old  
7 policy. You're not changing it. You're creating a new one.  
8 So you're not managing content by doing that.

9           If we look at Slide 30?

10          Mr. Foote explained the same thing. All these  
11 reports are new reports. How about once a report is  
12 entered, can it ever be changed?

13          No.

14          Can an employee edit or delete?

15          No.

16          So with the Report Rates, it's the same thing.  
17 With Claim 14, you can't manage any content. You can't  
18 manage what's there. You can only create new or add, and  
19 everyone agrees that adding is not managing. That goes to  
20 the contributing part.

21          So if we go to the next slide, please?

22          Where we're at is when you get to the question of  
23 infringement, and this is what your question will look like  
24 on your jury questionnaire: Did IV prove by a preponderance  
25 that Great West has infringed?

1           The answer is, no.

2           They didn't show that you could manage any of the  
3 content on that Driver List By Policy page because  
4 information about users is not content. And if you can't  
5 edit, delete, or do anything to the content, you're not  
6 managing it. That was the evidence on infringement. That's  
7 what we have been saying all along, and we, as shown here,  
8 presented you with evidence on that point.

9           Turn briefly to the invalidity.

10          If we go to the next slide.

11          In this case, there is a -- the parties have agreed  
12 that Claim 11 -- remember, invalidity, Claim 11, and then  
13 you have Claim 14? Claim 11, the independent claim, the  
14 parties have agreed, and IV admits, that Claim 11 is  
15 invalid.

16          If you look at the next slide, what we also know is  
17 that IV did not contest anything about our analysis of Claim  
18 11. All those steps that Dr. Crovella went through to show  
19 every element of Claim 11 was met, IV did not contest any  
20 one of those.

21          So the only issue we're left with -- if they're not  
22 contesting, then, look, that Pellegrino teacher reference,  
23 that has all the elements of Claim 11. So the only thing  
24 we're looking at now is, all right, what about Claim --  
25 Claim 14, does it have the elements of Claim 14? That's all

1 we're left with.

2 And if you go and look -- we -- we would need to  
3 show that you're managing content. So we have the apparatus  
4 of Claim 11.

5 Can you go back for a minute, Mr. Simmons?

6 We have the apparatus of Claim 11. All you have to  
7 now show is can you manage the content, and can you  
8 contribute the content? And the evidence on this was  
9 undisputed.

10 Why? IV never brought any witness to talk about  
11 invalidity. They brought no one into this court to defend  
12 their patent. Smith didn't talk about it. They didn't  
13 bring anybody.

14 So we're looking at only the evidence that Crovella  
15 presented. They're not disputing it.

16 And if we go to the next slide, here it is.

17 So it was pointed to -- it's Figure 5 of the  
18 Pellegrino patent, which is GWX-122. And if you look at  
19 that slide, Lesson Element 160 includes both text and audio  
20 material, so you're contributing content.

21 And here what I would say is, well, here, you're  
22 really talking about content. This is how the patent talks  
23 about content. It's an article about clearing clogged  
24 drains. Well, here's an article about the -- the space  
25 program -- the United States space program. That's content.

1 Those are words. That's saying something. And that's  
2 exactly what Pellegrino does. And the teacher can  
3 contribute that content.

4 If we go to the next slide.

5 The teacher can then manage the content. Manage  
6 that lesson that they're going to do on the astronauts, they  
7 can go in there and they want to change something, so at --  
8 the Pellegrino patent, which is, again, GWX-122, if you want  
9 to take a look at it, at Lines -- Column 24, Lines 62  
10 through 64, the teacher can go in and modify the lesson.

11 Okay. Now, you actually are managing content then.  
12 You're changing the words on the screen. That's all that's  
13 left with Pellegrino is those two elements, and they don't  
14 bring anybody to say we're wrong, and they can't. That's  
15 exactly what the reference shows.

16 So as you heard -- if we could get the next slide?

17 As you heard -- and by the way, Dr. Crovella was  
18 clear that there is content -- there is content in the  
19 Pellegrino reference.

20 If we hit the next slide, what you know and have  
21 been told is, okay, we've got to show this by clear and  
22 convincing evidence, clear and convincing evidence that that  
23 Claim 14 is invalid.

24 Well, we know Claim 14 has all the elements of  
25 Claim 11 because of that independent/dependent. They don't

1 dispute that. IV doesn't dispute Claim 11.

2 And then we know on Claim 14, the two elements,  
3 managing -- contributing content and managing it, they're  
4 both there. They're both disclosed in the patent.

5 Okay. Well, if we go to the next slide.

6 And by the way, Dr. Crovella had no -- he was asked  
7 by counsel for IV: And you maintain that it is clear and  
8 convincing that Claim 14 is invalid, don't you?

9 And he had no reservations, but absolutely it is.  
10 Absolutely, given this record. And then nobody from IV got  
11 up to dispute it. They didn't call anybody on that point.  
12 They presented no evidence.

13 So what's the impact of that? It's not only clear  
14 and convincing evidence. It's the only evidence. That's  
15 all that's on this record is that that -- that that  
16 Pellegrino patent invalidates Claim 14.

17 THE COURT: You have three minutes remaining.

18 MR. BETTINGER: Thank you, Your Honor.

19 So what do you hear from counsel? Oh, you take  
20 away our patent, you take away everything. No, we don't.  
21 They only sued us on Claim 14. It's only Claim 14 that  
22 we're asking be taken away because it's invalid. That's  
23 what they chose to sue us on. It's Claim 14.

24 And remember their expert when they went and bought  
25 the patent, those three patents, they bought three patents,

1 didn't they? So we take away one claim of one patent, and  
2 they come in here and say, oh, you're taking away everything  
3 we have. No, we're not. We're taking away one claim. Why?  
4 Because Pellegrino invalidates it. And they didn't put up  
5 any evidence to suggest otherwise.

6 So where does that leave us? When you get to the  
7 verdict form -- if you could, Mr. Simmons -- we have a  
8 question: Did Great West prove by clear and convincing  
9 evidence that Claim 14 is invalid?

10 Yes.

11 I don't know how there could be any other answer.  
12 We put the only evidence on in the case. None of it has  
13 been disputed.

14 So let me turn just for a moment to damages.  
15 And -- and recall, we don't say you get to this because the  
16 patent isn't infringed, and the patent is invalid. If Claim  
17 14 is not infringed, then Claim 14 is not valid. It's  
18 invalid. So, therefore, you don't get to damages. You just  
19 don't get to it.

20 But I want to hit on it for one -- one reason.

21 If you could put up the next slide?

22 Remember, yesterday Mr. Bakewell testified. He  
23 kind of had a chart like this and said, well, I didn't --  
24 I couldn't put those to scale because if I did, that red  
25 line would go off the chart. Well, what we went back and

1 I asked our -- our team to do is, hey, put it to scale.  
2 What's it look like when you're asking for \$20.3 million  
3 over on the right? And what's it look -- what do the rest  
4 of these look like? And that's to scale. That's to scale.

5 So as you can see, drawing to scale, that's what  
6 the patent had been valued before this lawsuit, all the way  
7 through. We were sued in January of 2015. Purchase, sales,  
8 all those things are going on. That's the value of the  
9 patent in 2015. And they come in here four years later and  
10 say they want to \$20.3 million.

11 Look, once the Wall Street boys got ahold of this  
12 patent, hired some lawyers, and paid some experts, they  
13 hatched a plan. They tried to make it look like the patent  
14 was worth \$20.3 million when they knew that wasn't the case.

15 I can just see them all in their conference room.  
16 Hey, we've got a really good one here. We're going to turn  
17 that thing into \$20.3 million. This patent talking about  
18 content being managed -- contributed and managed on a  
19 website.

20 Maybe we can confuse some folks. Maybe we can pull  
21 a fast one. Maybe we can go after witnesses and attorneys  
22 rather than present evidence. Maybe we can just avoid the  
23 evidence. Maybe we can get a company like  
24 Great West. Hey, maybe they'll pay a whole bunch of money  
25 in settlement.

1 THE COURT: Counsel, your time has expired. Take a  
2 few -- few seconds and finish up.

3 MR. BETTINGER: Yeah.

4 So -- but you know what they overlooked, this is  
5 about the evidence -- the evidence that you heard in this  
6 case, the documents we just showed you.

7 So, ladies and gentlemen, you're the check in the  
8 system. You get to require a Plaintiff to show up, look  
9 them in the eye, size them up. And when they -- when they  
10 decide to hide, you get to consider that, too, and you get  
11 to do the right thing. Fair is fair.

12 Thank you. And we appreciate your time.

13 THE COURT: All right. Plaintiff may present its  
14 final closing argument.

15 Mr. Gilliland, you have 10 minutes and 33 seconds  
16 left.

17 Would you like a warning?

18 MR. GILLILAND: If I could have a warning at two  
19 minutes, Your Honor?

20 THE COURT: All right. I'll do that. And you may  
21 proceed.

22 MR. GILLILAND: Thank you.

23 Ladies and gentlemen, that was a very interesting  
24 argument, I'll say, by Mr. Bettinger. But I'll submit to  
25 you that that's just marketing fluff -- I mean, lawyer fluff



1 from the same company that brought you marketing fluff. And  
2 we're going to walk through just a few of the things.

3           They say they've got nothing to hide, that they're  
4 being candid and honest with you. They put up -- you  
5 noticed every one of those slides he put up. I think every  
6 single one of them had the -- the three little periods,  
7 ellipses or whatever, you know, and that means we're not  
8 showing you the whole truth. We're not showing you  
9 everything.

10           Everything single thing they've shown you, they've  
11 cut something out of it, removed something off of it, or  
12 tried to hide it from you.

13           As a matter of fact, if we could bring up -- let's  
14 bring up GWX-761.

15           And these are some of the stipulations that they've  
16 talked about over and over. And if we could go to the next  
17 page, I want to point out to you -- one of the things, you  
18 heard them complain and contest infringement.

19           And we brought you evidence on infringement because  
20 that was our burden to prove infringement. Well, they've  
21 contested and raised all these issues about it, and they've  
22 shown you pieces of the stipulations.

23           But if we could go down to No. 14.

24           Not once -- not one single time did these  
25 Defendants admit -- that they'll at least admit the

1 administrative interface is there.

2           They didn't even -- even with their own expert and  
3 even when Mr. Bettinger is telling you they've got nothing  
4 to hide, they never pointed out that, we'll at least admit  
5 that much, that when you look at Claim 11 in the back of the  
6 patent and you see an administrative interface, we'll admit  
7 that we have an administrative interface. Not once did they  
8 tell you that.

9           Instead, they keep picking from other parts of this  
10 and just showing you pieces, bits and pieces of what's going  
11 on.

12           And what we've tried to do is bring you the truth,  
13 bring you the evidence to demonstrate to you that they do,  
14 in fact, infringe. They do, in fact, use Intellectual  
15 Ventures's patent, Intellectual Ventures's property.

16           You can take that down, Mr. Cartwright. And if you  
17 will -- let's see, can you bring up the testimony from  
18 yesterday afternoon?

19           They complain that we did not bring up -- or bring  
20 evidence of validity. Well, you know as well as I do  
21 because His Honor told you that that is their burden, and  
22 it's their burden to prove that the patent is invalid by  
23 clear and convincing evidence, to create in your minds  
24 enough evidence to create a clear and abiding conviction  
25 that it is highly probable than not. That's their burden.

1           If they don't get there, if they don't cross that  
2 clear and convincing finish line, it is not my job or  
3 Intellectual Ventures's job to go out and pick them up and  
4 drag them the rest of the way.

5           And they didn't get there, and you know they didn't  
6 get there because if we could go to Page 133, this is just  
7 one example. I'm sure you remember several others because  
8 you heard the testimony. You don't have to rely on some  
9 lawyer fabricated slide created last night to understand the  
10 testimony.

11           If we look at Page 133. This is their expert,  
12 Dr. Crovella, on the witness stand. And my colleague,  
13 Mr. Rupp, asked him: Said that at that time, November 30th,  
14 2018, your answer of whether or not a user adding their  
15 address or submitting a change of address into the Great  
16 West portal system was or was not contributing content, and  
17 your answer at that time under oath was: Yes, that is user  
18 contributing content.

19           His answer: At that time, in that context, yes.

20           So about six months ago, he agreed with us that a  
21 user adding their address and submitting a change of address  
22 was content.

23           But today, questioned by Mr. Rupp -- and this is  
24 just yesterday afternoon: Today you have a different  
25 opinion -- or two days ago in the afternoon, I'm sorry,

1 Monday afternoon -- but today you have a different opinion  
2 on that very subject; is that right?

3 Answer: We're sitting here today in this context,  
4 that's correct.

5 What do you think changed between November of last  
6 year and his testimony in this courtroom today that caused  
7 him to change his mind? He had no explanation for that.  
8 Well, I think we all know what happened with that. I think  
9 there was a little seed planted in his mind whether by an  
10 insurance company or whether by a lawyer, but they  
11 encouraged him to change his mind.

12 Now, they've given Intellectual Ventures a hard  
13 time for not having anybody here. I'm sorry, I should have  
14 been more clear in opening and voir dire, but Mr. Win, who  
15 has sat here with us every day, is from Intellectual  
16 Ventures. And he is not from Wall Street, all right? He's  
17 not any guy in a big double breasted suit in a tall building  
18 up in New York. He's been here every day.

19 But there's nothing Mr. Win needed to tell you to  
20 help understand their system. They're the people that have  
21 the information you need to answer the questions on this  
22 verdict form, not Intellectual Ventures.

23 And they -- they talk about the price of the  
24 patent. And Mr. Bettinger had him create a slide,  
25 supposedly last night, putting into scale because

1 Mr. Bakewell was unable to do that. Well, let's put that  
2 into context a little bit.

3           They say that this number should just be -- they  
4 might have pumped a lot of oil off of our property. They  
5 might have taken a lot of water from our reservoir. But  
6 they should only have to pay for \$300,000.00. That's all he  
7 says you should get, just what Intellectual Ventures paid  
8 for this patent when it wasn't even a patent yet. It was  
9 just a glimmer in the eye of an inventor.

10           Well, let's put that into context, and if we can  
11 pull up GWX-389?

12           This is one of the rating policy documents that  
13 we've talked about.

14           Let's go to -- I think it's the third page and zoom  
15 in, if you will, to the center of the page there.

16           This is one of those where they can go in, and they  
17 can enter the mileage, and it helps calculate how much the  
18 premium that company owns. And this is a company that  
19 just -- it's got 65 power units. It's one truck -- one  
20 trucking company, excuse me. One trucking company. And  
21 their rating policy data shows that for one year -- just one  
22 year, that company is going to pay Great West \$217,000.00.  
23 It's kind of blurry, but you can see it. \$217,000.00, the  
24 price of a one-year trucking policy for one customer is what  
25 Mr. Bakewell says they owe for hitting our invention, for

1 hitting that portal over 35 million times in just a short  
2 three-year period, from January 2015 to August 2018.

3 Now, if we were to count all the other times  
4 they've used it and are still using it today, you know that  
5 number would sky rocket. But we're -- we and Mr. Lasinski  
6 have tried to be reasonable with the use.

7 And then, finally, let's just talk just briefly  
8 about the dam -- I mean, about the testimony. Again,  
9 they've given you a hard time about -- or given us a hard  
10 time -- oh, let me back up.

11 Actually, can we bring up GX-122, please? I'm  
12 shifting gears back to this validity question.

13 And they've talked about and they've said that  
14 Dr. Crovella, who plays the ground is flat depending on  
15 which day of the week it is or where he happens to be.  
16 Well, they've shown you -- this is the Pellegrino patent,  
17 and they've shown you bits and pieces with a lot of artistic  
18 rendering to it.

19 But if we could go to Page 17 of the Pellegrino  
20 patent.

21 Here's something they didn't show you. This is the  
22 figures out of the Pellegrino patent. And the top figure is  
23 a lesson that a teacher is building. They're adding  
24 content. But they haven't contributed yet. They haven't  
25 published it. And if we scroll down just a little bit to

1 the figure below, I'm not going to modify this. This is  
2 straight out of the patent. And if you look right here  
3 above where it says Copy Lesson No. 374, it says: Lesson  
4 had been published and cannot be modified.

5 Pellegrino, in the figures that they didn't bother  
6 showing you, demonstrate Pellegrino does not teach managing  
7 content. They didn't come anywhere close to the clear and  
8 convincing finish line that they needed to cross.

9 THE COURT: Two minutes remaining.

10 MR. GILLILAND: Thank you, Your Honor.

11 So we did not have to put on a witness to try and  
12 drag them across their own finish line.

13 And, finally, talking about people you will not  
14 hear from. Well, Mr. Foote took the stand, and some of the  
15 information Mr. Foote gave you came from Mr. Posson sitting  
16 out here in the gallery. And he's the general counsel for  
17 Great West. He's their in-house lawyer. He never took the  
18 witness stand. He could have gotten up here and told you  
19 that information himself, but he didn't.

20 But what he will do is he will wait patiently for  
21 you to come out that door with your verdict. And when you  
22 do, he's going to walk right out of this courtroom, and he's  
23 going to get on his phone and he's going to make a phone  
24 call. And that phone call is either going to say, hey, we  
25 played that East Texas jury. We got away with it. Or it's

1 going to say: Guys, the gig is up. Even insurance  
2 companies have to follow the rules. Even insurance  
3 companies have to accept responsibility and pay for things  
4 they use. And which way that phone call goes, ladies and  
5 gentlemen, is up to you.

6 Thank you, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, I'd  
8 like to provide you with a few final instructions before you  
9 begin your deliberations.

10 You must perform your duty as jurors without bias  
11 or prejudice as to any party. The law does not permit you  
12 to be controlled by sympathy, prejudice, or public opinion.

13 All parties in this case expect that you will  
14 carefully and impartially consider all the evidence, follow  
15 the law as I have given it to you, and reach a just verdict,  
16 regardless of the consequences.

17 Answer each question in the verdict form from the  
18 facts as you find them from this case, following the  
19 instructions that the Court has given you.

20 Do not decide who you think should win and then  
21 answer the questions accordingly. Again, your answers and  
22 your verdict must be unanimous.

23 You should consider and decide this case as a  
24 dispute between persons of equal standing in the community,  
25 of equal worth and holding the same or similar stations in



1 life. This is true in patent cases between corporations,  
2 partnerships, and individuals.

3 A patent owner is entitled to protect its rights  
4 under the laws of the United States. This includes bringing  
5 a suit in a U.S. District Court for money damages for  
6 infringement.

7 The law recognizes no distinction among types of  
8 parties. All corporations, partnerships, and other  
9 organizations stand equal before the law, regardless of  
10 their size, regardless of who owns them, and they are to be  
11 treated as equals.

12 Now, when you retire to the jury room to deliberate  
13 on your verdict, as I've said, you'll each have a copy of  
14 these final instructions from the Court to you to take with  
15 you.

16 If you desire during your deliberations to review  
17 any of the exhibits which the Court has admitted into  
18 evidence, then you should advise me by a written note given  
19 to the Court Security Officer and signed by your foreperson.  
20 And I will then send that exhibit or those exhibits to you.

21 Once you retire, you should first select your  
22 foreperson and then conduct your deliberations. If you  
23 recess during your deliberations, follow all the  
24 instructions the Court has given you about your conduct  
25 during the trial.

1           After you've reached your verdict, your foreperson  
2 is to fill in the answers in the verdict form which reflect  
3 your unanimous decisions. Do not reveal your answers until  
4 such time as you're discharged unless otherwise directed by  
5 me. And you must never disclose to anyone, not even to me,  
6 your numerical division on any question.

7           Any notes that you've taken over the course of the  
8 trial are aids to your memory only. If your memory should  
9 differ from your notes, then rely on your memory and not  
10 your notes. The notes are not evidence. And a juror who  
11 has not taken notes should rely on his or her own  
12 independent recollection of the evidence and should not be  
13 unduly influenced by the notes of other jurors.

14           Notes are not entitled to any other -- any greater  
15 weight than the recollection or impression of each juror  
16 about the testimony.

17           If you want to communicate with me at any time  
18 during your deliberations, you should give a message or a  
19 question to the Court Security Officer, which has been  
20 signed by your foreperson. The Court Security Officer will  
21 then bring it me.

22           I'll respond as promptly as possible, either in  
23 writing or by having you brought back into the courtroom  
24 where I can address you orally.

25           I will always first disclose to the attorneys in

1 the case your question and my response before I answer any  
2 question.

3 After you have reached a verdict and I've  
4 discharged you from your job as jurors, I want you to  
5 understand you are not required to talk with anyone about  
6 your service in the case.

7 But by the same token, at that time, you will be  
8 free to discuss your service in this case with anyone of  
9 your choosing. The choice is yours at that point in time,  
10 ladies and gentlemen, and yours alone.

11 I'll now hand eight copies of the verdict -- excuse  
12 me, the instructions from the Court to the jury and the  
13 verdict form to the Court Security Officer to deliver to the  
14 jury in the verdict -- to deliver to the jury during  
15 deliberations.

16 Ladies of -- ladies and gentlemen of the jury, you  
17 may now retire to the jury room to deliberate. We await  
18 your verdict.

19 COURT SECURITY OFFICER: All rise for the jury.

20 (Jury out.)

21 THE COURT: Be seated, please.

22 Counsel, you are more than welcome to wait here in  
23 the courtroom if you desire. By the same token, if you are  
24 not in the courtroom, please make sure that my staff has an  
25 active, working cell phone number where we can reach you in

1 the event the Court receives either a note from the jury or  
2 a verdict.

3 Pending a question from the jury or a return of  
4 their verdict, the Court stands in recess.

5 COURT SECURITY OFFICER: All rise.

6 (Recess.)

7 (Jury out.)

8 COURT SECURITY OFFICER: All rise.

9 THE COURT: Be seated, please.

10 All right. Counsel, we've received a note from the  
11 jury. It's signed by Ms. Edwards, who I assume to be Juror  
12 No. 1, as the juror foreperson.

13 I'm going to mark the note in the upper right-hand  
14 corner as No. 1 for identification. I'll hand the original  
15 note to the Courtroom Deputy.

16 I have two copies of the note for each side. If  
17 you'll approach the bench.

18 MR. BETTINGER: Okay. Thank you.

19 THE COURT: Let me go over it with you, and then  
20 we'll talk about an appropriate response.

21 The jury requests six specific exhibits. They've  
22 given them by exact exhibit number, and I've already pulled  
23 them and placed them in the same order that they requested  
24 them in the note. Beyond those six exhibits, the note says:  
25 And Uncontested Facts Listing.

1 I assume that's the stipulated facts.

2 MR. BETTINGER: Yes, Your Honor.

3 THE COURT: And we ought to be able to hand them  
4 that document.

5 Then it says: And Dr. Crovella's testimony  
6 transcript.

7 Obviously, I can't give them the transcript of his  
8 testimony. And I'll tell them that in the note.

9 With regard to the Uncontested Facts Listing, is  
10 that an exhibit? Is it a document filed on the document?  
11 What's the best way for us to agree on what that is and  
12 produce it so that I can send it back to them?

13 MR. BETTINGER: It's Exhibit 761.

14 MR. GILLILAND: It is, Your Honor.

15 MR. BETTINGER: GWX-761.

16 THE COURT: Plaintiff's?

17 MR. GILLILAND: Defendant's Exhibit.

18 MR. BETTINGER: GWX is the --

19 THE COURT: GWX?

20 MR. BETTINGER: Yes.

21 THE COURT: What's the number again?

22 MR. BETTINGER: 761.

23 THE COURT: 761.

24 MR. BETTINGER: Yes.

25 THE COURT: All right. Ms. Lockhart, if you'll

1 pull that one.

2 Notice of Uncontested Facts. Good. I'll put that  
3 in the list.

4 All right. Counsel, I'll tell you what, I'm going  
5 to recess briefly. And I'll prepare a written response to  
6 go back to the jury with these exhibits, and I'll be back as  
7 soon as that's ready and go over it with you and get your  
8 approval before I send it to the jury.

9 So don't leave the courtroom, but the Court stands  
10 in recess.

11 COURT SECURITY OFFICER: All rise.

12 (Recess.)

13 (Jury out.)

14 COURT SECURITY OFFICER: All rise.

15 THE COURT: Be seated, please.

16 All right. Counsel, I've got a written response to  
17 the jury's question prepared. If a representative from each  
18 side will approach, I have two copies of the proposed  
19 response to give you.

20 I'll read my response into the record, and then  
21 I'll take comments from counsel for the parties with regard  
22 to the same. This is the response to Jury Note No. 1.

23 Members of the jury, in response to your note,  
24 I am sending you the six specific exhibits which you  
25 requested, being:

1 GWX-482, GWX-493, GWX-494, GWX-484, GWX-389,  
2 GWX-490.

3 Additionally, and regarding your question for the,  
4 quote, Uncontested Facts Listing, close quote, I am sending  
5 you Exhibit GWX-761, which is that document.

6 Finally, as to your request for Dr. Crovella's  
7 testimony transcript, I cannot send that transcript to you.

8 As I told you in my first set of instructions at  
9 the beginning of the trial, transcripts of witness testimony  
10 will not be available for you to view in the jury room while  
11 you deliberate.

12 Consequently, you must rely on your memories of the  
13 evidence and testimony given by each witness during the  
14 trial.

15 That's the Court's proposed response to be sent in  
16 together with the actual exhibits as identified.

17 Does Plaintiff have any objection to that response?

18 MR. GILLILAND: No objection, Your Honor.

19 THE COURT: Does Defendant?

20 MR. BETTINGER: No, Your Honor.

21 THE COURT: All right. Then I'll execute the  
22 original response and hand it, together with the actual  
23 exhibits, to the Court Security Officer, and direct that he  
24 deliver them to the jury in the jury room.

25 With that, counsel, and pending either another note

1 from the jury or the return of a verdict, we stand in  
2 recess.

3 COURT SECURITY OFFICER: All rise.

4 (Recess.)

5 (Jury out.)

6 COURT SECURITY OFFICER: All rise.

7 THE COURT: Be seated.

8 Off the record.

9 (Off the record discussion.)

10 THE COURT: All right. Let's go back on the  
11 record.

12 Counsel, the Court has received a second note from  
13 the jury. I have two copies for each side if you want to  
14 approach.

15 I'll mark it as Item 2 in the upper right-hand  
16 corner. I'll read it into the record.

17 Jurors, please request Pellegrino  
18 Patent No. 6,149,441. Thank you.

19 Signed by Ms. Edwards, as foreperson.

20 I'll hand the original note to Ms. Lockhart to be  
21 included in the papers of this case.

22 It appears, counsel, that the exhibit they're  
23 asking for is GWX-122, the Pellegrino patent, the '441  
24 patent. I've already pulled that exhibit, and I've prepared  
25 a response that I've given you a copy of that effectively



1 says:

2 In response to your note, attached is GWX-0122,  
3 which is the Pellegrino patent, Patent No. '441.

4 Any objection to me sending that response with the  
5 exhibit itself to the jury in compliance with their request?

6 MR. GILLILAND: No objection from the Plaintiff.

7 MR. BETTINGER: No objection, Your Honor.

8 THE COURT: All right. I'll execute the written  
9 response and ask the Court Security Officer to deliver it  
10 with the exhibit to the jury.

11 And with that being completed, subject to either  
12 another note being received from the jury or the return of a  
13 verdict, we stand in recess.

14 COURT SECURITY OFFICER: All rise.

15 (Recess.)

16 (Jury out.)

17 COURT SECURITY OFFICER: All rise.

18 THE COURT: Be seated, please.

19 All right. Counsel, the Court's received the  
20 following note from the jury:

21 We have reached a verdict.

22 Signed by Ms. Nicole Edwards, as foreperson, and  
23 dated with today's date.

24 I'll deliver the original note to the court  
25 security -- Courtroom Deputy to be included in the papers of

1 this case.

2 And I'll direct the Court Security Officer to bring  
3 in the jury.

4 COURT SECURITY OFFICER: All rise for the jury.

5 (Jury in.)

6 THE COURT: Please be seated.

7 Ms. Edwards, I understand that you're the  
8 foreperson of the jury; is that correct?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Has the jury reached a verdict?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: Would you hand the completed verdict  
13 form to the Court Security Officer, who will bring it to me?

14 Ladies and gentlemen of the jury, I'm going to  
15 announce the verdict into the record at this time. I'm  
16 going to ask each member of the jury to listen very  
17 carefully, because after I have done that, I'm going to poll  
18 the jury to make sure that this is, in fact, the unanimous  
19 verdict of all eight members of the jury.

20 Turning to the verdict form and beginning on  
21 Page 3 where Question 1 is found:

22 Did Intellectual Ventures prove by a preponderance  
23 of the evidence that Great West has infringed Claim 14 of  
24 the '177 patent?

25 The jury's answer is: Yes.

1           Turning to Page 4 of the verdict form where  
2 Question 2 is located:

3           Did Great West prove by clear and convincing  
4 evidence that Claim 14 of the '177 patent is invalid?

5           The jury's answer is: No.

6           Turning to Question 3 on Page 5 of the verdict  
7 form:

8           What sum of money, if any, paid now in cash do you  
9 find by a preponderance of the evidence would fairly and  
10 reasonably compensate Intellectual Ventures for the  
11 infringement by Great West of Claim 14 of the '177 patent?

12           The jury's answer is: \$1,500,000.00,  
13 \$1,500,000.00.

14           Turning next to Page 6, which is the last page of  
15 the verdict form, I find that it is dated with today's date,  
16 and it is signed by Ms. Edwards, as the foreperson of the  
17 jury.

18           Ladies and gentlemen of the jury, let me poll you  
19 at this time to make sure this verdict unanimously reflects  
20 the decision of all eight members of the jury.

21           If this is your verdict as I have read it, would  
22 you please stand?

23           (Jury polled.)

24           THE COURT: Thank you. Please have a seat.

25           Let the record reflect that the jury -- all eight

1 members immediately stood and rose in response to the  
2 Court's question to poll the members of the jury with regard  
3 to the unanimous nature of this verdict.

4           The Court finds that this is the unanimous verdict  
5 of all eight members of the jury, and I'll deliver the  
6 original verdict to the Courtroom Deputy.

7           The Court accepts the jury's verdict in this case.

8           Ladies and gentlemen, this now completes the trial  
9 of this case. From the very beginning, I have repeatedly  
10 mentioned to you over and over about not discussing this  
11 case with anyone, including with yourselves, until you had  
12 heard all the evidence. I also gave you various other  
13 instructions.

14           I'm releasing you from all those instructions now.  
15 At this point in time, you are free to discuss the case with  
16 anyone to whatever extent you would like to, you are also  
17 free not to discuss the case with anyone.

18           I want you to understand that it's been the  
19 practice in this district since I got out of law school, and  
20 that's a long time ago, that when a verdict is returned  
21 after a jury trial, the lawyers involved cannot initiate a  
22 conversation with the members of the jury about their  
23 service.

24           If you want to have a conversation with them, you  
25 will have to initiate it. And to facilitate that and to

1 encourage them not to camp out at the door of the courthouse  
2 so that you have to walk right by them when you leave the  
3 building in hopes that you'll stop and want to talk to them,  
4 I have secured four cell phone numbers, two from the  
5 Plaintiff's side and two from the Defendant's side. And I'm  
6 going to give you those in the jury room in a moment.

7           And if any of you would like to call any or all of  
8 the numbers listed there and talk about your service in this  
9 case, I guarantee you they'll all be happy to hear your  
10 comments and your suggestions and anything you have to say.

11           By the same token, ladies and gentlemen, if you do  
12 not wish to talk to any of the lawyers in this case about  
13 your service, you are not obligated to in any way. And if  
14 you're sure you don't want to do that, then just don't pick  
15 up a copy of those phone numbers when I make them available  
16 to you in the jury room. The decision is 100 percent yours  
17 and yours alone.

18           Now, with regard to other persons besides counsel  
19 that have been active in this case, again, it is your  
20 decision and your decision alone.

21           If as I suggested early on somebody on the first  
22 day met you at home when you came in and asked you what  
23 happened in federal court in Tyler, you can now answer those  
24 questions. You can now talk about it if you want to. But  
25 you're not obligated to.

1           That -- that is the practice that we've  
2 consistently and traditionally followed in this district and  
3 that's the practice we're going to follow in this case.

4           Also, ladies and gentlemen, I want to tell you as  
5 sincerely and as seriously as I can how much the Court  
6 appreciates your service in this case. This has been a  
7 sacrifice for every member of the jury to serve in this  
8 case. And everybody in this courtroom recognizes that.

9           Every one of you have had important things to do in  
10 your own respective lives over the last several days, and  
11 those matters have been put on hold so that you could serve  
12 as the jury in this case, and that is no small thing.

13           Quite honestly, ladies and gentlemen, without good  
14 citizens like yourselves being willing to present yourself  
15 and serve when selected and make the sacrifice that that  
16 requires, the court system would come to a standstill.

17           Our rights as Americans under the Seventh Amendment  
18 to the trial by jury in a civil case would effectively be  
19 lost if we didn't have citizens like you who would step up  
20 and respond appropriately and serve when called upon. You  
21 have done very, very real and important public service by  
22 serving on this jury. And it warrants recognition by the  
23 Court.

24           In fact, ladies and gentlemen, I'm going to ask a  
25 favor of you at this point, and I do this in every jury

1 trial where I've accepted the jury's verdict.

2 I'm going to discharge you from your service as  
3 jurors. And when I do that, you're free to leave.

4 But rather than immediately get up and walk out of  
5 the courthouse, if when I discharge you, if you would do me  
6 a personal favor and go back to the jury room for just a few  
7 minutes, I'd like to come into the jury room, and I'd like  
8 to shake each hand, I'd like to look each one of you in the  
9 eye and thank you by name for the service that you've  
10 rendered, because, quite honestly, I believe it warrants  
11 that, and it's that important.

12 You're not required to do that, but if you would  
13 afford me that privilege, I will not keep you very long, but  
14 I think -- I think it's something that is warranted in this  
15 case and in every case where a jury's made a sacrifice like  
16 you have.

17 If you if you will consider doing that, I would  
18 consider it a very great privilege.

19 With that, ladies and gentlemen, the Court accepts  
20 the verdict, the Court discharges you as members of the jury  
21 in this case, and if you will do me that privilege,  
22 I will meet you in the jury room in just a minute.

23 Counsel, that completes the trial of this case, and  
24 you are excused.

25 COURT SECURITY OFFICER: All rise.

1 (Jury out.)

2 (Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

3/13/19  
Date